

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIONEL PIPER, :
 :
 : Petitioner, :
 :
 :
 : -v- :
 :
 : JOSEPH T. SMITH, Superintendent, :
 : Shawangunk Correctional Facility, :
 : Respondents. :
 :
 :
 -----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/11/2011

07 Civ. 9866 (DLC)

MEMORANDUM OPINION
AND ORDER

DENISE COTE, District Judge:

By order and judgment entered on January 13, 2011, Lionel Piper's (the "petitioner") petition for a writ of habeas corpus was denied and this action was dismissed. On March 11, 2011 the Court's Pro Se Office received a motion for an extension of time to file a notice of appeal pursuant to Rule 4(a)(5) of the Federal Rules of Appellate Procedure from the petitioner. For the following reasons, the petitioner's motion is granted.

DISCUSSION

Rule 4(a)(5) provides that in a civil case, a motion for an extension of time to file a notice of appeal must be filed no later than 30 days after the expiration of the 30 day period in which a petitioner may file a notice of appeal. Fed. R. App. P. 4(a)(1)(A), 4(a)(5)(A)(i). The Court "lacks [subject matter] jurisdiction to grant any extension motion that is not filed within Rule 4(a)(5)'s 30-day 'grace period.'" Cohen v. Empire Blue Cross & Blue Shield, 142 F.3d 116, 118 (2d Cir. 1998) (per

curiam). Furthermore, pursuant to Rule 4(a)(5)(A)(ii), a petitioner must show excusable neglect or good cause why such a motion should be granted.

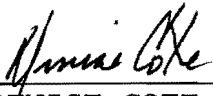
The order dismissing Piper's petition was entered on January 13. Thus, the time in which Piper could file a notice of appeal as of right expired on or about February 13. Piper timely filed his motion for an extension of time to file a notice of appeal on March 11, within the thirty days permitted by Rule 4(a)(5)(A)(i). Additionally, since petitioner did not receive a copy of the January 13 Order until February 18 -- several days after the period in which he was entitled to file a notice of appeal had expired -- the petitioner has shown good cause or excusable neglect sufficient to grant the motion.

CONCLUSION

The petitioner's motion for an extension of time to file a notice of appeal is granted. The petitioner's time to file a notice of appeal is extended fourteen days from the date of this order. See Fed. R. App. P. 4(a)(5)(C).

SO ORDERED:

Dated: New York, New York
April 11, 2011



DENISE COTE
United States District Judge

COPIES SENT TO:

Lionel Piper
00-A-3102
Attica Correctional Facility
Box 149
Attica, NY 14011-1049